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United States of America
In the
Supreme Court of the United States

OCTOBER TERM, 1945

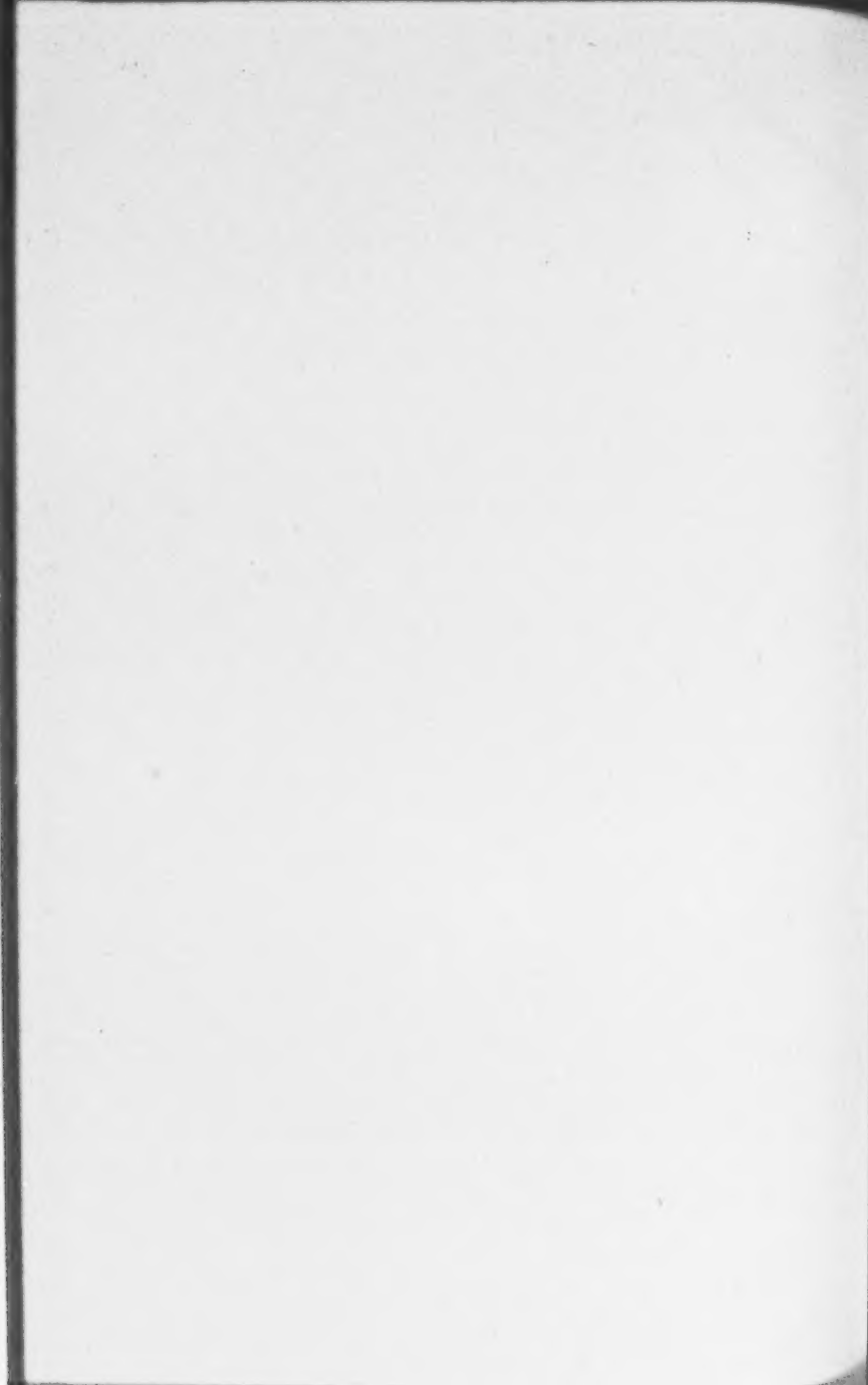
No. 633

FRANCIS P. SLATTERY,
Petitioner and Appellant,
vs.

ALLEN A. McDONALD, Sheriff of Ingham County,
Respondent and Appellee

PETITION FOR REHEARING

WM. HENRY GALLAGHER,
Attorney for Petitioner,
3005 Barlum Tower,
Detroit 26, Michigan.



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(Unless otherwise clearly shown by context, figures in parentheses
refer to pages of the printed record)

Now comes the Petitioner, by Wm. Henry Gallagher, his
attorney, and respectfully shows:

FIRST: From the records and briefs herein the follow-
ing propositions are established:

(a) Summary judgment of contempt, without
charge, notice or hearing, for an offense committed in
open court is an exception to the requirements of due

process. This exception is held to be justified by the necessity for the prompt vindication of the dignity of the court before the public, and applies only to offenses committed in open court.

(b) Due process of law requires that any contempt *not committed in open court*, and for which there is thus no necessity of prompt vindication of the Court's dignity before the public, be punished only after notice and a hearing.

(c) In the instant case the alleged contempt was not committed in open court. Yet summary judgment was imposed. Such summary conviction, without notice and a hearing, was a clear violation of the due process clause of the United States Constitution as amended.

(d) The unlawful summary judgment in this case is not an isolated case. It was in accordance with a uniform practice which has evolved in Michigan, and which has been sustained by the Michigan Supreme Court. Pursuant to that practice the rights of Michigan citizens under the due process clause are now consistently violated.

(e) By the decisions of the Michigan Supreme Court it is now the law of Michigan that one convicted of contempt on the basis of secret testimony before an Inquisitor is entitled to have returned to a reviewing appellate court only so much of the record, upon which his conviction is based, as the Inquisitor sees fit to return. Thus the alleged contemnor is not only denied a day in court on the charge, but is denied a review of the question whether, on the whole record, he was even *prima facie* guilty.

SECOND: The denial of relief to petitioner by this court constitutes a condonation of these violations of constitutional rights, operates as an encouragement of the Michigan Courts' continued invasions of such rights, and is fraught with grave consequences to the citizens of Michigan.

THIRD: That if this Court's action upon our petition, as was plainly the case in the District Court, was influenced by any presumption of guilt upon the part of petitioner, arising from the imperfect record returned, the following facts should be considered by this Court:

Petitioner has been in the banking and trust business all of his life. In 1941 a bill was introduced in the Michigan legislature designed to limit his employer bank in establishing branches. He was assigned by his employer to contact the members of the legislature and explain the reasons for its opposition to the pending bill.

In 1943, as the result of Inquisitor Carr's investigations, petitioner was arrested on September 13, 1943, on a charge of offering a bribe in 1941. A preliminary examination was held (69). The case presented against petitioner consisted of the unsupported testimony of a legislator to the effect that about noon of the day before the Bank Bill was acted upon by the House, a stranger, who was later identified as petitioner, approached the legislator and, standing in a doorway where he could be observed both from the House chamber and from the house cloak room, counted over some bills and said he would make it interesting for the legislator to oppose the Bank Bill (70).

Petitioner was arraigned upon this charge on January 7, 1944. On that day his attorney asked that his trial be fixed for the first day upon which a jury would be available, and reminded the court that petitioner was entitled

to a prompt trial under the Michigan Constitution. The State opposed this motion. The Judge stated he had never before heard of a defendant in a criminal case asking a prompt trial, commended petitioner for so doing, but denied petitioner's request (70).

Michigan law requires that one claiming an alibi must give written notice of the same, naming the supporting witnesses. (Act No. 80, P. A. 1939.) Petitioner accordingly gave notice that at the time of the alleged bribe offer he was attending a convention at Cheboygan, Michigan, and named as witnesses, among others, a prosecuting attorney of one Michigan county, an assistant prosecuting attorney of another county, and another member of the Michigan Bar (70).

For more than a year after petitioner's arrest he repeatedly sought to obtain a trial of the charge pending against him (71), but in vain, his constitutional right in that respect being ignored.

On November 8, 1944, while he was still awaiting trial, Inquistor Carr subpoenaed petitioner to appear before him forthwith. Petitioner communicated with his counsel who advised him that he would be obliged to honor the subpoena notwithstanding the pendency of the case against him, but warned him to make certain in giving his testimony that he understood the questions, to make clear that he had no personal knowledge when such was the case, and not to attempt to fix definite times, dates or other facts, by guess (71).

Petitioner then proceeded to Judge Carr's secret chambers and gave his testimony. In the course of this testimony he was asked whether an approach had been made to him in 1941 by a legislator in the lobby of a hotel. It will be noted that this question does not refer to any conduct on petitioner's part, but to the conduct of a third per-

son. Judge Carr says he has good reason to believe such an incident occurred. Possibly there was some jocular bantering of that nature. Certainly serious talks of such nature do not ordinarily occur in hotel lobbies. It is even possible that such an approach to petitioner might have been made without petitioner grasping the significance of such approach. But certainly petitioner is entitled to be confronted by his accuser, before judgment of guilt may be pronounced against him.

And note too, that when Judge Carr stated to petitioner that he had a right to a answer "yes" or "no" answer, that statement itself was incorrect and thus placed petitioner in a false position. Petitioner says that he understood from this incorrect statement of Judge Carr, that he had either to answer "yes" or go to jail for contempt. In this mental state petitioner asked "Do I have to answer a question that would incriminate me?" in an effort to express the thought "do I have to answer 'yes' in order to escape going to jail for contempt?" (52)

Wherefore, petitioner prays that a rehearing be granted on his petition for certiorari.

WM. HENRY GALLAGHER,
Attorney for Petitioner,
3005 Barlum Tower,
Detroit 26, Michigan.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition is in my judgment well founded, was filed in good faith and was not filed for the purpose of delay.

WM. HENRY GALLAGHER,
Attorney for Petitioner.